

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Amendment of the U.S. Table of) RM-9911
Frequency Allocations to Designate)
the 2500-2520 /2670-2690 MHz)
Frequency Bands for the Mobile-)
Satellite Service)

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OPPOSITION BY WIRELESS ONE OF NORTH CAROLINA, L.L.C.

Wireless One of North Carolina, L.L.C. ("WONC")¹, by its attorneys, hereby opposes the Petition for Rulemaking filed with the Federal Communications Commission ("Commission") by the Satellite Industry Association ("SIA") requesting to amend the U.S. Table of Frequency Allocations to allocate the 2500-2520 MHz and 2670-2690 MHz frequency bands for the Mobile-Satellite Service ("MSS") ("Petition").² The spectrum that SIA is requesting be allocated for MSS is already licensed and being utilized by commercial wireless broadband operators, such as WONC, to provide a variety of broadband services to consumers in markets throughout the country as well as by Instructional Television Fixed Service ("ITFS") licensees who utilize the band nationwide to transmit educational programming for distance learning. Reallocation of this encumbered spectrum would not serve the public interest and would rob commercial operators and educators alike of much needed spectrum.

¹ WONC is a wireless broadband operator in North Carolina. MCI WorldCom owns 50% of WONC and CT Communications, Inc. owns 49.49%.

² The Petition was filed with the Commission on April 28, 2000 and appeared on Public Notice on July 7, 2000. Pursuant to a Public Notice dated July 28, 2000 (DA 00-1673), the date for comments to the Petition was extended to August 28, 2000.

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List A B C D E

I. The Commission Should Not Adopt an Allocation for MSS at 2500-2520 MHz and 2670-2690 MHz.

In its Petition, SIA proposes that the Commission adopt an allocation for MSS at 2.5 GHz in order to meet the growing demand for existing MSS-delivered voice and data services and Third Generation broadband services. Petition at p. 3. SIA claims that this allocation must be done as soon as possible to permit sufficient lead time for operators to design and launch systems. Id. While WONC acknowledges that additional spectrum may be needed for MSS, that spectrum should not be taken from current licensees who are using the 2.5 GHz spectrum for broadband wireless services.

A. The 2500-2520 MHz and 2670-2690 MHz Spectrum Is Currently Allocated for ITFS and MDS.

The frequencies that SIA is requesting be reallocated for MSS-related services are currently allocated for Multipoint Distribution Service (“MDS”) and ITFS under Parts 21 and 74 of the Commission’s Rules. Specifically, the frequencies are allocated for the H3 MDS channel and the A1, B1, A2, B2, G3 and G4 ITFS channels and the entire I band of response channels. These channels are licensed to commercial wireless broadband operators and, in the case of the A, B and G channels, to educational institutions, in markets throughout the country. In each of the A, B and G channel groups there are four (4) channels of 6 MHz each that are licensed and being utilized together. In its Petition, SIA noted that the spectrum is allocated for MSS internationally and that it is the only internationally-allocated MSS frequency band in which no systems have either been licensed or applied for in the United States. Petition at p. 6. This statement is grossly incorrect. SIA fails to acknowledge the existence of hundreds of licensees and multiple commercial and educational operations on the spectrum.

WONC holds authorizations for eleven (11) Basic Trading Areas (“BTA”) in North Carolina. With each of the BTAs comes the right to apply for all available MDS channels in that BTA, in most cases that includes the H3 channel.³ Further, WONC has excess capacity lease agreements with numerous educational institutions in North Carolina which have licenses for the A, B or G-Group ITFS channels. Currently, WONC, like many other wireless broadband operators, is implementing a business plan which focuses on providing two-way broadband applications utilizing MDS and ITFS frequencies in a digital format. Over the past five years WONC has spent millions of dollars and allocated considerable resources to developing a wireless broadband network in North Carolina. Implementation of these innovative applications for the spectrum only recently became possible as a result of changes in the Commission’s rules pertaining to MDS and ITFS spectrum.⁴ WONC and other broadband operators nationwide will now be able to offer highly efficient broadband services to individuals and businesses alike in competition with the telephone and cable companies. This third competitive platform is essential to balance the interests of the nation’s consumers. The spectrum that SIA now proposes be reallocated for MSS is an important part of WONC’s developing broadband business plan. To deprive wireless broadband operators of this spectrum now would be fundamentally unfair to the companies who have so heavily invested in the spectrum over the last five years and detrimental to the nation’s private and commercial users who need a third competitor to ensure economic

³ In those BTAs where the H3 channel is not available to the BTA holder, the channel is licensed to and being utilized by an incumbent licensee. Often, the incumbents have had a license for the channel for several years.

⁴ See, In the Matter of Amendment of Parts 21 and 74 to Enable Multipoint Distribution Service and Instructional Television Fixed Service Licensees to Engage in Fixed Two-Way Transmission, 13 FCC Rcd 19112 (1998).

balance in the pricing of services.

B. It Would Be Unconstitutional for the Commission to Have Sold the MDS Spectrum at Auction and Then Take It Back by Redesignating It for MSS.

As discussed above, WONC holds authorizations for eleven BTAs in North Carolina and all channel rights associated with those BTAs. WONC acquired six (6) of those BTAs at auction and paid more than \$7,000,000 for them. The other five BTAs were acquired from entities which purchased them at auction. The Commission has been fully paid for each of the 11 BTAs. WONC has the rights to the H3 channel in each of those BTAs. WONC bid and paid for the BTA authorizations with the expectation that it could apply for the H3 channel in each of those markets.⁵ Now, SIA is proposing that the H3 channel, which WONC paid for through the BTA, be taken away and reallocated for MSS-related services. This is patently unconstitutional under the Fifth Amendment to the United States Constitution.

Specifically, the Fifth Amendment provides that private property shall not be taken without just compensation. U.S. CONST. amend V. In its Petition, SIA is proposing that the Commission take away spectrum from BTA owners, like WONC, who have paid for the spectrum, and make it available for satellite operators. There is no mention of compensation to BTA holders. Reallocation of the spectrum by the Commission without compensation to the BTA holders or incumbent licensees would clearly violate the Fifth Amendment and would meet with opposition from current MDS BTA holders and incumbent H3 licensees. Rather than

⁵ WONC is not unique among wireless broadband operators who acquired BTA authorizations in the MDS auction. In many cases, the authorizations included rights to the H3 channel which factored into the bids made by the operators and the H3 channel is a part of the business plans developed by these operators.

freeing up spectrum for MSS-related services the spectrum would be subject to litigation and would probably be available to no one until such litigation is resolved.

C. The Commission Has Never Forced Incumbent Licensees to Vacate Spectrum Unless Alternative Spectrum Is Made Available and the New Licensees Are Required to Pay for the Incumbents to Move.

In those limited circumstances in which the Commission has found it necessary to require incumbent licensees to vacate spectrum so that it could be reallocated, the Commission has always made certain that alternative spectrum is available. Further, the new licensees for the vacated spectrum are required to pay for the incumbents to move. For example, Section 21.50 of the Commission's Rules permits entities proposing to implement services using emerging technologies to negotiate with existing licensees in the 2.11-2.13 and 2.16-2.18 GHz bands to relocate the existing licensees' operations to other fixed microwave bands or other media. 47 C.F.R. §21.50(a). The emerging technologies entity must pay all relocation costs, including engineering, equipment, site and FCC fees and must build the replacement system and test it for compatibility with the licensee's existing system. 47 C.F.R. §21.50 (c). As a safeguard, if within one year of the initial relocation the existing licensee finds that the new facilities provided by the emerging technology entity are not comparable to the prior facilities, the emerging technologies licensee must pay to relocate the existing licensee to new facilities or back to its former facilities. 47 C.F.R. §21.50(e).

In its Petition, SIA has not proposed any alternative spectrum that would be available to current licensees nor has it offered to pay the costs of moving the current MDS and ITFS licensees to new spectrum. If the Commission finds that current MDS and ITFS licensees have to be relocated, the Commission should adopt rules similar to those in Section 21.50 requiring

the MSS licensees to bear all costs associated with such relocation and giving current MDS and ITFS licensees the right to be relocated within one year back to their original facilities if operation on the new facilities is not compatible.

SIA's failure to discuss the reallocation implications of its proposal underscore its total ignorance of the current usage of the spectrum. More importantly however, if SIA could identify relocation spectrum, it is likely that the best resolution to the MSS spectrum problem would be for it to seek allocation of the identified relocation spectrum for MSS thereby permitting incumbents to continue existing operations and system development without any unnecessary disruption.

II SIA's Request To Reallocate the 2500-2520 MHz and 2670-2690 MHz Frequency Bands for MSS Is Frivolous and Contrary to the Public Interest.

SIA's proposal to reallocate the 2500-2520 MHz and 2670-2690 MHz frequencies for MSS is frivolous and contrary to the public interest. SIA's failure to research and acknowledge the existence of the multitude of licensees and plethora of operators on the spectrum is entirely inconsistent with the information the Commission requires to seriously consider a petition for spectrum reallocation. Perhaps SIA does not realize that there are licensees on these frequencies and their failure to acknowledge their existence is borne of ignorance. Perhaps, and a more likely scenario, SIA purposefully chose to ignore the existence of MDS and ITFS licensees on this spectrum in hopes that it could convince the Commission to reallocate the spectrum without having to assess the impact on the current licensees. In either case, SIA has put forth a frivolous proposal.

Further, SIA has failed to demonstrate that the spectrum it requests is uniquely suited or singularly available for MSS expansion operations. Alternative spectrum is available and SIA


has not provided any evidence that the need for additional spectrum can not be met through the allocation of unused or less heavily encumbered spectrum. In order to have its enormously disruptive proposal taken seriously SIA must be required to demonstrate why less disruptive alternatives are not viable.

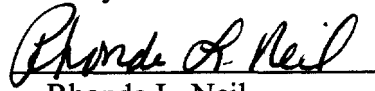
CONCLUSION

The 2500-2520 MHz and 2670-2690 MHz frequency bands are currently utilized by MDS and ITFS licensees throughout the country. The channels in these frequency bands are an integral part of wireless broadband systems that are providing competition to hard wire cable and telephone companies, of wireless broadband systems that are currently under development, and of educational long distance learning operations that have been in existence for decades. Reallocating the frequencies would critically harm these systems as it would take away spectrum which is crucial to their operations. This is clearly contrary to the public interest which is now being served. Further SIA has failed to demonstrate why it can not utilize other spectrum alternatives for MSS. SIA's Petition should therefore be denied by the Commission.

Respectfully submitted,

**WIRELESS ONE OF NORTH
CAROLINA, L.L.C.**

By: 
Robyn G. Nietert

By: 
Rhonda L. Neil

Brown Nietert & Kaufman, Chartered
1920 N Street, NW, Suite 660
Washington, DC 20036
(202) 887-0600


August 28, 2000

Its Attorneys

CERTIFICATE OF SERVICE

I, Rhonda L. Neil, an attorney with the law firm of Brown Nietert & Kaufman, Chartered, hereby certify that on the 28th day of August, 2000, a copy of the foregoing "Opposition by Wireless One of North Carolina, L.L.C." was deposited in the U.S. mail, postage prepaid, addressed to the following:

The Satellite Industry Association
225 Reinekers Lane, Suite 600
Alexandria, VA 22314


Rhonda L. Neil